



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 20, 1997

Mr. Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR97-2533

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110299.

The City of DeSoto (the "city"), which you represent, received a request for four categories of attorney billing statements for legal services incurred by the city. You inform this office that information responsive to two of the categories of information will be provided to the requestor, and that there are no records responsive to the third category of information. You assert that the fourth category of information requested, billings from the law firm of Sifford & Anderson, is excepted from disclosure pursuant to sections 552.103, 552.107 and 552.111 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Initially, with regard to the information requested which you assert does not exist, Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the city holds information from which the requested information can be obtained, the city must provide that information to the requestor unless it is otherwise excepted from disclosure.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The governing body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governing body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform this office that litigation in the lawsuit styled *Purakkal Paul Pothen vs. The City of DeSoto* is currently pending, and that the law firm of Sifford & Anderson, whose billing records are at issue in this ruling, was hired to review contractual obligations and liability issues related to the lawsuit which may affect the city's ability to settle the case. Upon review of the submitted information, we conclude you have met your burden in establishing the relatedness of the descriptions of legal services rendered to the pending litigation. The city may therefore withhold this information from disclosure under sections 552.103(a). You have not, however, shown how the amounts charged for services or the time spent performing services is related to the pending litigation and therefore, this information may not be withheld under the litigation exception. We have marked a representative sample of information that may be withheld from disclosure pursuant to section 552.103(a).

We will next address whether the other exceptions you raise apply to the amounts charged for services or the time spent performing services. Section 552.107 excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.* We conclude you have not demonstrated how the information in the submitted fee bills relating to the time spent performing services and the expenses incurred is privileged information. Therefore, you may not withhold this information under section 552.107(1).

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting

of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

We conclude you have not demonstrated how the information in the submitted fee bills relating to the time spent performing services and the expenses incurred constitutes advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Therefore, this information may not be withheld under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 110299

Enclosures: Marked documents

cc: Mr. Durwood Davis
514 North Hampton
DeSoto, Texas 75115
(w/o enclosures)